



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 460

[Docket ID FCIC-22-0001]

RIN 0563-AC77

Pandemic Cover Crop Program

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule announces the Pandemic Cover Crop Program (PCCP) to provide support for agricultural producers impacted by the COVID-19 pandemic for the 2022 crop year. USDA is dedicating funding to reach a broader set of producers than in previous COVID-19 assistance programs, with a specific focus on strengthening outreach to underserved producers and communities and small and medium agricultural operations. As a part of that initiative, this rule establishes PCCP for 2022.

DATES: *Effective* [Insert date 60 days after date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: David Zanoni; telephone: (816) 926-6142; email: david.zanoni@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Appropriations Act, 2021 (CAA; Pub. L. 116-260) provided funding to prevent, prepare for, and respond to the COVID-19 pandemic by providing

support for agricultural producers who were impacted. Secretary Tom Vilsack announced the USDA Pandemic Assistance for Producers initiative on March 24, 2021. USDA is dedicating \$6.5 billion in funding to reach a broader set of producers than in previous COVID-19 assistance programs, with a specific focus on strengthening outreach to underserved producers and communities and small and medium agricultural operations. As a part of that initiative, this rule establishes PCCP for 2022.

PCCP

The Federal Crop Insurance Corporation (FCIC) serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

For the 2021 crop year, FCIC implemented PCCP through a Notice of Funding Availability to help agricultural producers impacted by the effects of the COVID-19 outbreak. The economic challenges due to the pandemic made maintaining cover cropping systems financially challenging for many producers. For the 2021 crop year, PCCP premium support was provided to eligible producers for eligible insured acres on a spring crop insurance policy on which the producer planted a qualifying cover crop during the 2021 crop year.

FCIC amends 7 CFR part 460 to add a new subpart B to establish PCCP regulations for the 2022 crop year. For the 2022 crop year, PCCP premium support will be available to eligible producers for eligible insured acres on a crop insurance policy for

a first insured crop on which the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year. In addition, for the 2022 crop year, additional PCCP premium support will be available to eligible producers for eligible Whole Farm Revenue Protection (WFRP) acres on which the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year. PCCP premium support will be available for both eligible insured acres and eligible WFRP acres associated with the same planted acreage of qualifying cover crops. Supplemental Coverage Option, Enhanced Coverage Option, Post-Application Coverage Endorsement, and Hurricane Insurance Protection - Wind Index policies or endorsements will not be eligible for PCCP. Stacked Income Protection Plan (STAX) and Margin Protection (MP) policies will only be eligible for PCCP when insured as a standalone policy. STAX and MP endorsements to underlying policies will not be eligible for PCCP.

For the 2022 crop year, in States administering a cover crop program providing premium subsidy under an active Memorandum of Understanding (MOU) with RMA, as authorized by Section 508(c)(8) of the Federal Crop Insurance Act, insured acres qualifying for a State premium subsidy amount are eligible for a matching amount under PCCP, calculated on an FSA Common Land Unit (CLU) basis. The matching amount under PCCP per insured acre will be equal to the State contribution per insured acre on a CLU basis and is in addition to the base amount of PCCP. The matching amount under PCCP per insured acre will be limited by the amount of premium owed by the insured on a CLU basis. If limited, the State contribution amount and matching PCCP amount will be reduced proportionately on a CLU basis.

Some insureds will not owe enough premium to receive the full State premium subsidy support amount. Accordingly, any money contributed by a State that is not paid out via PCCP will be returned to the state within 90 days of the end of PCCP.

Notice and Comment and Effective Date

The Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits or contracts. This rule governs premium support for eligible producers for eligible insured acres on a crop insurance policy and therefore falls under the benefits or contracts exemption of the APA.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule under 5 U.S.C. 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) designated this rule as major under the Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (CRA, 5 U.S.C. 804(2)). Therefore, the date for making the regulatory changes in this rule effective in the Code of Federal Regulation (CFR) will be delayed for 60 days from the date of publication in the *Federal Register* to allow for Congressional review.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

OIRA designated this rule as economically significant under Executive Order 12866 and therefore, OIRA has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on [regulations.gov](https://www.regulations.gov).

Cost Benefit Analysis Summary

The 2022 PCCP provides premium support of up to \$5 per acre to eligible producers who plant and report to FSA (via the annual FSA-578 reporting) a qualifying cover crop on acreage insured under a Federal crop insurance policy (such as corn or soybeans) after June 15 of the 2021 crop year or during the 2022 crop year. The PCCP amount will not be paid directly to participants but will be accounted for in calculating total producer premium due from producers for the crop (for example, the corn or soybeans). Approximately 12.2 million net acres have received a premium reduction for the crop year 2021 PCCP. Note, however, that eligible acreage has expanded for the 2022 PCCP and in this analysis is projected at 23 million acres. The associated cost is estimated at \$116.2 million for the crop year 2022 PCCP.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b). The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this

action and this rule serves as documentation of the programmatic environmental compliance decision.

Although OIRA has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to require preparation of an environmental impact statement” when not interrelated to natural or physical environmental effects (see 40 CFR 1502.16(b)). PCCP was designed to avoid skewing planting decisions. Producers continue to make their planting and production decisions with the market signals in mind, rather than any expectation of what a new USDA program might look like.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal

consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Risk Management Agency and Federal Crop Insurance Corporation will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, the Risk Management Agency and Federal Crop Insurance Corporation is working with Tribes to provide information about PCCP.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563-0053 and 0563-0084.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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List of Subjects in 7 CFR Part 460

Crop insurance, Disaster assistance.

For the reasons discussed above, FCIC amends 7 CFR part 460 as follows:

PART 460—ADDITIONAL DISASTER PAYMENTS

1. Revise the authority citation for part 460 to read as follows:

Authority: 7 U.S.C. 1506(i) and 1506(o); and Division N of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260).

2. Add subpart B, consisting of §§ 460.8 through 460.13, to read as follows:

Subpart B – Pandemic Cover Crop Program

Sec.

460.8 Applicability.

460.9 Definitions.

460.10 Eligibility.

460.11 Calculating PCCP amounts for first insured crops.

460.12 Calculating PCCP amounts for WFRP.

460.13 Accounting for PCCP amounts.

Subpart B – Pandemic Cover Crop Program

§ 460.8 Applicability.

(a) This subpart specifies the terms and conditions of the Pandemic Cover Crop Program (PCCP).

(b) For the 2022 crop year, PCCP premium support is available to eligible producers for eligible insured acres on a crop insurance policy for a first insured crop on which the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year.

(1) For the 2022 crop year, in states administering a cover crop program providing premium subsidy under an active Memorandum of Understanding (MOU) with RMA, as authorized by section 508(c)(8) of the Federal Crop Insurance Act, insured acres qualifying for a state premium subsidy amount are eligible for a matching amount under PCCP.

(2) For the 2022 crop year, additional PCCP premium support is available to eligible producers for eligible Whole Farm Revenue Protection (WFRP) acres on which

the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year.

§ 460.9 Definitions.

Approved Insurance Provider (AIP) means a legal entity that has entered into a reinsurance agreement with the Federal Crop Insurance Corporation (FCIC) for the applicable reinsurance year and is authorized to sell and service policies or plans of insurance under the Federal Crop Insurance Act.

Crop insurance policy means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

Crop year means the period within which the insured crop is normally grown and is designated by the calendar year in which the insured crop is normally harvested.

Eligible insured acres means insured acres on which the producer planted a qualifying cover crop after June 15, 2021, during the 2021 crop year, or during the 2022 crop year, as reported on the Farm Service Agency's (FSA) common land unit(s) (CLU) to FSA via a completed and signed Form 578-Report of Acreage on or before March 15, 2022, which may be prior to FSA's acreage reporting date, and reported the same CLU(s) on their crop insurance acreage report by the applicable Federal crop insurance acreage reporting date for a 2022 crop year crop insurance policy for a first insured crop.

Eligible WFRP acres means acres on which a person with a 2022 crop year WFRP policy planted a qualifying cover crop after June 15, 2021, during the 2021 crop year, or during the 2022 crop year, as reported on the CLU(s) to FSA via a completed and signed Form 578-Report of Acreage on or before March 15, 2022, which may be prior to FSA's acreage reporting date.

Eligible producer means a producer meeting all of the eligibility requirements for PCCP.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA that administers the Federal crop insurance program.

First insured crop means, with respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Federal Crop Insurance Act.

FSA means the Farm Service Agency, USDA.

FSA Common Land Unit (CLU) means the smallest unit of land that has a permanent, contiguous boundary, common land cover and land management, common owner, and common producer association.

Insured acres means the participant's share of insurable acreage that is insured in accordance with a crop insurance policy purchased from an AIP.

Insured crop means a crop for which the participant has purchased a crop insurance policy from an AIP.

MOU means Memorandum of Understanding.

PCCP means Pandemic Cover Crop Program.

Person means a person as defined in 7 CFR 457.8(1).

Qualifying cover crop means any of the four types of cover crops:

(1) Cereals and other grasses;

(2) Legumes;

(3) Brassicas; and

(4) Other non-legume broadleaves, and mixtures of two or more cover crop species planted at the same time. An insured crop is not considered a qualifying cover crop.

RMA means the Risk Management Agency, USDA.

USDA means United States Department of Agriculture.

WFRP means Whole Farm Revenue Protection.

§ 460.10 Eligibility.

(a) For the 2022 crop year, to be eligible for premium support under PCCP, the participant must be a person who is eligible to receive Federal benefits and who has purchased a crop insurance policy for a first insured crop from an AIP for insured acres on which the participant planted a qualifying cover crop after June 15, 2021, during the 2021 crop year, or during the 2022 crop year.

(1) Cover crops must be specifically reported to FSA via the Form-578 with the corresponding crop code.

(2) Potential participants that are uncertain of whether their cover crop was reported to the FSA are encouraged to contact their local FSA county office (<http://farmers.gov/service-locator>).

(3) Only acreage reports that are filed or amended prior to March 15 will be considered for PCCP.

(b) Participants who are in violation of Highly Erodible Land or Wetlands Conservation (16 U.S.C. 3811, 3812, and 3821) are not eligible to receive benefits under PCCP.

(c) A person is not eligible to receive benefits under PCCP if at any time that person is determined to be ineligible for crop insurance.

(d) Supplemental Coverage Option, Enhanced Coverage Option, Post-Application Coverage Endorsement, and Hurricane Insurance Protection - Wind Index policies or endorsements are not eligible for PCCP.

(e) Stacked Income Protection Plan (STAX) and Margin Protection (MP) policies are only eligible for PCCP when insured as a standalone policy. STAX and MP endorsements to underlying policies are not eligible for PCCP.

§ 460.11 Calculating PCCP amounts for first insured crops.

(a) For the 2022 crop year, for eligible insured acres covered under a crop insurance policy for a first insured crop, the amount of premium support under PCCP for each insured acre will be \$5, calculated on a CLU basis, with a maximum equal to the amount of premium owed by the insured.

(b) For the 2022 crop year, in states administering a cover crop program providing premium subsidy under an active MOU with RMA, as authorized by Section 508(c)(8) of the Federal Crop Insurance Act, insured acres qualifying for a state premium subsidy amount are eligible for a matching amount under PCCP, calculated on a CLU basis, which may be in addition to the amount in paragraph (a) of this section.

(1) The matching amount under PCCP per insured acre will be equal to the state contribution per insured acre on a CLU basis.

(2) The matching amount under PCCP per insured acre will be limited by the amount of premium owed by the insured on a CLU basis. If limited, the state contribution amount and matching PCCP amount will be reduced proportionately on a CLU basis.

(c) Amounts under PCCP are limited to the full amount of premium owed by the insured for the eligible insured acres on a CLU basis. If the full amount under PCCP would result in a negative premium balance for the insured on a CLU basis, PCCP amounts will be limited to the full amount of premium owed on a CLU basis, with the amount calculated in paragraph (b) of this section being applied first and the amount calculated in paragraph (a) of this section being applied second.

(1) In cases where insureds are eligible for both paragraphs (a) and (b) of this section, and premium owed on a CLU basis is less than the amount in paragraph (b) of this section, the state contribution amount and matching PCCP amount in paragraph (b) of this section will be reduced proportionally on a CLU basis, and there will be no PCCP premium support amount applied in paragraph (a) of this section.

(2) In cases where insureds are eligible for both paragraphs (a) and (b) of this section, and premium owed on a CLU basis is greater than the amount in paragraph (b) of this section but less than the sum of the amounts in paragraphs (a) and (b) of this section, there will be no reduction to the state contribution amount and matching PCCP amount in paragraph (b) of this section, and the PCCP premium support amount in paragraph (a) of this section will be reduced.

(d) If the eligible insured acres are adjusted or revised for any reason, such as an overreporting of insured acres, the amount under PCCP will be based on the eligible insured acres after any such amendment.

§ 460.12 Calculating PCCP amounts for WFRP.

(a) For the 2022 crop year, for eligible WFRP acres, the amount of premium support under PCCP for each acre will be \$5, with a maximum equal to the amount of WFRP premium owed by the insured.

(b) PCCP amounts for WFRP are limited to the full amount of premium owed by the insured for the WFRP policy. If the full amount under PCCP would result in a negative premium balance for the insured, PCCP amounts will be limited to the full amount of premium owed.

(c) If the eligible WFRP acres are adjusted or revised for any reason, such as an overreporting of planted cover crop acres, the amount under PCCP will be based on the eligible WFRP acres after any such amendment.

§ 460.13 Accounting for PCCP amounts.

(a) The amount under PCCP will not be paid directly to eligible producers. FCIC and AIPs will account for the amount when calculating total producer premium due. AIPs will adjust participant bills accordingly. All bills follow the same terms and conditions specified in the crop insurance policy, regardless of PCCP amounts.

(b) PCCP premium support will be provided via premium billing adjustments by the applicable RMA premium billing date for the insured crop.

(c) PCCP premium support is available both for eligible insured acres and for eligible WFRP acres associated with the same planted acreage of qualifying cover crops.

(d) The payment limitations in 7 CFR 760.1507 are not applicable to PCCP.

(e) RMA will obtain cover crop records from FSA and determine eligibility such that eligible producers do not need to take any additional specific action through their crop insurance agent to enroll in the PCCP.

(1) In the event that any PCCP amount is determined to be incorrect, the amount will be recalculated until the 2022 reinsurance year annual settlement date of October 6, 2023, unless otherwise specified by the RMA Administrator.

(2) After October 6, 2023, the amount will be final except in cases of misrepresentation, fraud, scheme, or device.

Marcia Bunker,
Manager,
Federal Crop Insurance Corporation.

[FR Doc. 2022-02965 Filed: 2/10/2022 8:45 am; Publication Date: 2/11/2022]